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In re Application of :
Jen et al. :
Application No.: 10/077390 : DECISION ON
Filing or 371(c) Date: 02/15/2002 : PETITION
Attorney Docket Number: :
SJO920010053US1 (0506) :

This is a decision in response to the petition to revive the application under 37 CFR 1.137(b), filed October 20, 2008.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowability, mailed September 2, 2005. The Notice required corrected drawings, and set a non-extendable three (3) month period for reply. No reply having been filed, the application became abandoned December 3, 2005. A Notice of Abandonment was mailed February 13, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of the issue fee and corrected drawings; (2) the petition fee; and (3) a proper statement of unintentional delay.

The Power of Attorney filed June 30, 2008 was entered in error and has been removed. There is no evidence that the person signing the Power of Attorney is authorized to act on behalf of the assignee. The Power of Attorney was executed by Douglas Millet as IP Counsel. However, the Statement Under 37 CFR 3.73(b) is executed by David W. Lynch (Mr. Lynch also filed the Change of Correspondence Address, which has been entered and made of record). 37 CFR 3.73, Establishing right of assignee to take action, states in relevant part:

- (a) The inventor is presumed to be the owner of a patent application, and any patent that may issue therefrom, unless there is an assignment. The original applicant is presumed to be the owner of a trademark application or registration, unless there is an assignment.
- (b) (1) In order to request or take action in a patent or trademark matter, the assignee must establish its ownership of the patent or trademark property of paragraph (a) of this section to the satisfaction of the Director. The establishment of ownership by the assignee may be combined with the paper that requests or takes the action. Ownership is

established by submitting to the Office a signed statement identifying the assignee, accompanied by either

(i) Documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment). For trademark matters only, the documents submitted to establish ownership may be required to be recorded pursuant to § 3.11 in the assignment records of the Office as a condition to permitting the assignee to take action in a matter pending before the Office.

For patent matters only, the submission of the documentary evidence must be accompanied by a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or

(ii) A statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (e.g., reel and frame number).

(2) The submission establishing ownership must show that the person signing the submission is a person authorized to act on behalf of the assignee by:

(i) Including a statement that the person signing the submission is authorized to act on behalf of the assignee; or

(ii) Being signed by a person having apparent authority to sign on behalf of the assignee, e.g., an officer of the assignee.

(c) For patent matters only:

(1) Establishment of ownership by the assignee must be submitted prior to, or at the same time as, the paper requesting or taking action is submitted.

(2) If the submission under this section is by an assignee of less than the entire right, title and interest, such assignee must indicate the extent (by percentage) of its ownership interest, or the Office may refuse to accept the submission as an establishment of ownership.

Further to this, the MPEP 324 states:

V. PARTY WHO MUST SIGN

The submission establishing ownership must be signed by a party authorized to act on behalf of the assignee. The submission under 37 CFR 3.73(b) may be signed on behalf of the assignee in the following manner if the assignee is an organization (e.g., corporation, partnership, university, government agency, etc.):

(A) The submission may be signed by a person in the organization having apparent authority to sign on behalf of the organization. 37 CFR 3.73(b)(2)(ii). An officer (chief executive officer, president, vice-president, secretary, or treasurer) is presumed to have authority to sign on behalf of the organization. The signature of the chairman of the board of directors is acceptable, but not the signature of an individual director. Modifications of these basic titles are acceptable, such as vice-president for sales, executive vice-president, assistant treasurer, vice-chairman of the board of directors. In foreign countries, a person who holds the title "Manager" or "Director" is normally an officer and is presumed to have the authority to sign on behalf of the organization. A person having a title (administrator, general counsel) that does not clearly set forth that person as an officer of the assignee is not presumed to have

authority to sign the submission on behalf of the assignee. A power of attorney (37 CFR 1.32(b)(4)) to a patent practitioner to prosecute a patent application executed by the applicant or the assignee of the entire interest does not make that practitioner an official of an assignee or empower the practitioner to sign the submission on behalf of the assignee.

(B) The submission may be signed by any person, if the submission sets forth that the person signing is authorized (or empowered) to act on behalf of the assignee, i.e., to sign the submission on behalf of the assignee. 37 CFR 3.73(b)(2)(i).

(C) The submission may be signed by a person empowered by an organizational resolution (e.g., corporate resolution, partnership resolution) to sign the submission on behalf of the assignee, if a copy of the resolution is, or was previously, submitted in the record.

Where a submission does not comply with (A), (B), or (C) above, evidence of the person's authority to sign will be required.

Before the POA may be entered, evidence of the authority of the person signing the POA, or a POA executed by a person with the authority to act on behalf of the assignee, is required.

This application is being referred to the Office of Data Management for processing into a patent.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

/Derek L. Woods/
Derek L. Woods
Attorney
Office of Petitions